

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC.
d/b/a EZ CRUISE PARKING; LIGHTHOUSE
PARKING, INC.; and SYLVIA ROBLEDO d/b/a 81ST
DOLPHIN PARKING**

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT
FACILITIES CORPORATION**

**RESPONDENTS THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES' AND THE GALVESTON PORT FACILITIES CORPORATION'S
MOTION TO DISMISS**

COME NOW The Board of Trustees of the Galveston Wharves ("Wharves") and the Galveston Port Facilities Corporation ("GPFC"), respondents in the above entitled and numbered cause, by and through their attorneys, Anthony P. Brown and Wm. Hulse Wagner, and file this Motion to Dismiss as follows:

I. THE DISPUTED TARIFF PROVISION HAS BEEN AMENDED

Complainants' claims are based on revisions made to Wharves' Tariff Circular No. 6, Item 111 in May 2014, and effective as of July 1, 2014. On September 22, 2014, Wharves further amended this provision, to be effective October 1, 2014. The amendment eliminates the "Off-Port Parking Users" access fee category, which forms the basis of Complainants' allegations in this proceeding. Instead, Complainants and other persons subject to Item 111 will be charged access fees on a "per trip" basis for entry

onto Port property in order to access the Galveston Island Cruise Terminal. The rates, effective October 1, 2014, now range from \$20.00 to \$60.00 per vehicle per entry, depending on vehicle size and passenger capacity.¹ Until October 1, 2014, Complainants will be charged the \$8 per space fee that had been in place until the effective date of the May 2014 amendment.² Thus the “Off-Port Parking Users” fees they complain of have been eliminated, and the increases they complain of in the interim have been rescinded.³ The adoption of this amended Tariff therefore renders the complaints in this case moot.

Additionally, and as discussed more fully below, Complainants’ other claims fail to specify a claim within the jurisdiction of the Federal Maritime Commission. No justiciable controversy remains, and this matter should be dismissed.

This Motion is supported by the following Affidavits, which are attached hereto and incorporated herein by reference:

1. The Affidavit of Michael Mierzwa, Wharves’ Port Director and President of Galveston Port Facilities Corporation, together with materials attached thereto.
2. The Affidavit of Anthony Brown, legal counsel for Respondents, together with materials attached thereto.
3. The Affidavit of Cecil Stroud.

II. ARGUMENT AND AUTHORITIES

¹ A true and correct copy of the amended Tariff provision is attached as Exhibit 1 to the affidavit of Port Director Michael Mierzwa. The amendment thus reverts back to the uniform access fee that had existed prior to the 2006 amendments to Tariff No. 6. As stated in Mr. Mierzwa’s Affidavit, Complainant Santa Fe Cruise Parking, Inc. dba EZ Cruise Parking had requested the Port “Off-Port Parking Users” fees in lieu of access fees charged on a per-trip basis. . All Complainants operated under that fee scheme for well over 3 years prior to bringing their claims in this proceeding.

² See Item No. 111, Notes C and D of the amended Tariff Circular No. 6, attached as Exhibit 1 to the affidavit of Michael Mierzwa.

³ During the pendency of this proceeding, Complainants have been paying the Port the \$8 per space fee and placing the amount in dispute into the registry of the United States District Court for the Southern District of Texas, Houston Division in Case No. G-14-CV-206; *Robledo, et al. v The Board of Trustees of the Galveston Wharves, et al.* These funds can now be released to the Complainants.

A. Complainants' Claims Related to Tariff Circular No. 6 Must be Dismissed as Moot

Although phrased in a variety of ways, the gravamen of Complainants' complaint was the "Off-Port Parking Users" category of access fees under Tariff Circular No. 6 Item 111, and the increased charges thereunder adopted in May 2014. These claims are now moot. The September 22, 2014 amendment eliminates the challenged category of rates. Additionally, the September 22, 2014 amendment rescinded the increase in the "Off-Port Parking Users" access fee which had been adopted in May. As a result, Complainants will not be charged the higher \$28.88 per space per month access fee made the basis of their complaint. Those higher fees were rescinded. Rather, the access fees for the period of July 1 to October 1, 2014 will be based on the previous rate of \$8.00 per space per month.⁴

Since the issue of the lawfulness of the Port's tariffs and practices has become moot there is no longer any controversy for the Commission to resolve. *American Plant Food Corporation v. Port of Harlingen Authority*, 1985 WL 148946 (F.M.C. 1985).

It is well-settled that when issues initially raised in a complaint are no longer in controversy the proceeding may be dismissed as being moot. *In United States v. Alaska Steamship Company*, 253 U.S. 113, 116 (1970), the Supreme Court stated:

[I]t is a settled principle in this court that it will determine only actual matters in controversy essential to the decision of the particular case before it . . . However convenient it might be to have decided the question of the power of the Commission . . . this court "is not empowered to decide moot questions or abstract propositions, or to declare, for the

⁴ As noted above, Complainants have been paying the Board of Trustees based on the \$8.00 per space per month rate during the pendency of the suit. The balance of the fees, or the amount based on \$20.88 per space per month, were paid into the Court's registry in Case No. G-14-CV-206; *Robledo, et al. v The Board of Trustees of the Galveston Wharves, et al*, in the United States District Court for the Southern District of Texas. Those funds may be released back to Complainants. Additionally, the Board of Trustees will be issuing refunds to those other entities who are similarly situated but who did not appear in this proceeding.

government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it.” (Citation omitted.)

The Federal Maritime Commission has consistently granted motions to dismiss based on mootness where by an act of a party or parties an existing controversy has come to an end. See *Kerr Steamship Company, Inc. v. Isthmian Steamship Company, et al.*, 2 U.S.M.C. 93 (1939); *The Port Commission of the City of Beaumont, et al. v. Seatrain Lines, Inc.*, 3 F.M.B. 581 (1951); *Investigation of Rates in the Hong Kong-United States Atlantic and Gulf Trade*, 11 F.M.C. 168 (1967); *Pacific Far East Lines—Alleged Rebates*, 11 F.M.C. 357 (1968); and *Pan Ocean Bulk Carriers Ltd.—Investigation of Rates on Neo-Bulk Commodities in the Trade Between the United States and South Korea*, 22 F.M.C. 634 (1980); *Distribution Services Limited v. Asia North America Eastbound Rate Agreement*, 1990 WL 454990 Docket No. 90-02, Docket No. 90-04 (November 2, 1990); *New Orleans S.S. Ass'n v. Plaquemines Port Harbor & Terminal Dist.*, 816 F.2d 1074, 1077 (5th Cir. 1987) (amendment of tariff rendered moot request to enjoin enforcement of rates under prior tariff).

B. Complainants’ Claims Regarding Access Points are Not Related to Tariff Circular No. 6, Are Not Justiciable Under the Shipping Act. Additionally, they are Preempted by Homeland Security Laws and Regulations

Complainants argue that the Port unfairly “requires” them to use the same access point as other passenger vehicles and commercial vehicles accessing the Cruise Terminal while allowing Port shuttles to access a different route through Port property.⁵ The Port has designated the entrance located at 22nd and Harborside Drive (Hwy 275) as the designated access area for all non-port vehicles entering the Cruise Terminal for purpose

⁵ See Page 26; Paragraphs G. 5-6 of Complainants’ Verified Complaint.

of unloading passengers and luggage.⁶ Port-operated vehicles transporting passengers from Port Parking Lots located on Harborside Drive access the Cruise Terminal at an entrance near 28th Street and Harborside Drive. Unlike the Complainants' typical customers, these passengers on Port operated shuttles typically have already entered Port property, dropped off their luggage, and are returning to enter the Cruise Terminal. The Port's decision regarding how passengers access the Cruise Terminal and how commercial non-Port vehicles access the Cruise Terminal is neither the subject of any tariff nor subject to review by the Federal Maritime Commission.

Moreover, and in addition to general traffic flow efficiency, the Port has the authority to establish appropriate access requirements under the Homeland Security Act of 2002, the Maritime Transportation Security Act of 2002 and regulations promulgated by the Department of Homeland Security and the United States Coast Guard. For example, 33 C.F.R. §128.300 *et seq* requires passenger terminal operators to prepare security plans to deter unauthorized access, prevent the introduction of weapons and other dangerous materials into the area. Obviously, efficient traffic flow facilitates these efforts.

In contrast, the Federal Maritime Commission has not been granted authority to alter security measures put into place under these statutes. In fact, Coast Guard regulations require that anyone claiming to be aggrieved by any decisions made under Part 104 of Title 33 must appeal directly to the Coast Guard.⁷ For these reasons, Complainants' claims regarding access point locations must be dismissed.

⁶ See Exhibit 2 attached to the affidavit of Michael Mierzwa.

⁷ 33 CFR §104.150 Right to appeal:

C. Complainants Claims Regarding Refusal to Deal or Negotiate, Are Not Justifiable Under the Shipping Act and Preempted by Homeland Security Law and Regulations

Complainants have raised a vague allegation that the Port “unreasonably refused to deal or negotiate with Complainants” regarding the May 2014 Amendment to Tariff No. 6.⁸ The September 22, 2014, Amendment effectively nullified those Tariff provisions rendering moot this claim.

During the course of these proceedings, the Wharves repeatedly negotiated with the Complainants regarding Tariff Circular No. 6, most recently in an expedited mediation on September 5, 2014. After those attempts were unsuccessful, the Wharves determined that the cost of litigation over a pricing plan put into effect in 2006 at Complainants’ request was not cost effective.⁹ As a result, the Wharves adopted the amendments attached as Exhibit 1 to Michael Mierzwa’s Affidavit, in order make the access fees uniform for off-site parking lot operators, hotel operators and others, as demanded by Complainants.¹⁰

In addition, Wharves employees did negotiate with Complainants before the May 2014 amendment to Tariff Item No. 111 was adopted. Indeed, Complainants’ representatives came to a public meeting of the Board of Trustees to communicate their

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal as described in §101.420 of this subchapter.

⁸ See Page 25, Paragraph E. of Complainants’ Verified Complaint.

⁹ The Wharves firmly believes that it could have prevailed in this proceeding without amending its Tariff. However, it could do so only after incurring significant litigation costs. As a local Port with no tax base, it elected to modify the Tariff in order to resolve these issues. See Affidavit of Michael Mierzwa.

¹⁰ Complainants also complain about certain off-port parking lot operators who are not charged access fees. However, those other operators do not actually enter Port property for commercial purposes. Rather, their customers walk across a street and enter Port property as pedestrians. See Affidavit of Michael Mierzwa.

position.¹¹ Their real claim is that the Board of Trustees did not agree with them. Regardless, the Complaint only deals with the prior version of the Tariff, which has now been rescinded. The typical dispute involving such a claim involves the refusal of a marine terminal operator to negotiate a lease or allow access to port facilities by a party. For example, in *Canaveral Port Authority – Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate*, 29 S.R.R. 1436 (2003), the Commission reviewed a tug company’s application for a tug franchise which had been denied. In this case, it is clear that Complainants not only negotiated but conveyed their position in public meetings.

46 U.S.C. §41104(10) does not guarantee the right to enter into a contract, much less a contract with any specific terms. *New Orleans Stevedoring Company v. Board of Commissioners of the Port of New Orleans*, 2002 WL 33836158 (FMC 2002). Rather, it requires only that carriers “refrain from ‘shutting out’ any person for reasons having no relation to legitimate transportation-related factors.” *Id.* In other words, Section 41104(10) comprises two elements: (1) a refusal to deal or negotiate; (2) that is objectively unreasonable because it has no legitimate transportation-related reason. In this case the Port issued a scheduled rate under a Tariff and Complainants wanted a better rate. Complainants communicated their position forcefully, vigorously and repeatedly in discussions with Port staff.

A refusal to deal or negotiate is established where a carrier refuses to consider a bona fide offer from an offeror without justification. See *Canaveral Port Auth. – Possible Violations of Sec. 10(b)(10), Unreasonable Refusal to Deal or Negotiate*, 29 S.R.R. 1436 (2003). In *Canaveral Port Auth.*, the Commission found an unreasonable refusal to deal

¹¹ See Attachment 3 to the Affidavit of Michael Mierzwa, attached hereto.

where the Port, without good cause, expressly refused to even consider an application submitted by a tug company application for a tug franchise. Once a carrier has considered a bona fide offer, however, a party's rejection of the offer cannot simply be equated with a refusal to deal or negotiate. *See In Seacon Terminals, Inc. v. Port of Seattle*, 26 S.R.R. 886 (1993). In *Seacon Terminals*, Seacon alleged that the Port of Seattle unlawfully excluded it from the port by refusing to negotiate a new lease. *Id.* at 899. The Commission found that the port negotiated with Seacon for over a year, and because no new lease was signed with Seacon, the port's negotiation and eventual agreement for a lease with another company was a reasonable exercise of its business discretion. *Id.*

Under Complainant's reasoning, a marine terminal operator unlawfully "refuses to deal" whenever it refuses to capitulate. There is simply no authority to support this position.

III. COMPLAINANTS' SHUTTLES ARE NOT TAXICABS FOR HIRE

In a recent Joint Status Report, Complainants assert that even with the recent amendment, they are treated differently than taxicabs and therefore still have a claim under the Shipping Act. This very thin reed fails. First, and foremost, Complainants' Shuttle Buses are not taxicabs. They are not equipped with taximeters, and are not offered for hire.

The City of Galveston regulates "vehicles for hire" under Chapter 35 of the Code of the City of Galveston.¹² Taxicab operators cannot charge more than \$3.00 for the first ¼ mile, and 60 cents for each ¼ mile thereafter. There are no provisions authorizing taxicabs to recoup access fees or other costs.¹³ Apart from taxicabs, the City Code

¹² Chapter 35 of the City Code is attached to the Affidavit of Anthony Brown, attached hereto.

¹³ *See Id.* at §35-87.

provides that a person may not (1) operate a “taxicab, limousine, bus, shuttle or pedicab service” inside the city, or (2) transport a passenger for hire inside the city by taxicab, limousine, shuttle, or pedicab, without “operating authority” granted by the city.¹⁴ “Operating authority” means written permission granted on an annual basis by the director under this chapter to operate a taxicab, limousine, bus, shuttle service, or pedicab, and “Taxicab, limousine, bus, shuttle, or pedicab service” means a passenger transportation service operated for hire.¹⁵ While the Code does not define the term “for hire,” Black’s Law Dictionary (5th Ed.) defines this term as follows: “To transport passengers or property for a fare, charge or rate to be paid by such passengers, or persons for whom such property is transported.” Complainants’ shuttles do not pick up and accept payments from passengers, and they do not offer discounts to persons who might choose not to ride their shuttle buses to the Cruise Terminal. In any event, the City of Galveston chooses not to regulate Complainants’ shuttle buses because they are not operated “for hire.”¹⁶ Thus, Complainants do not state a case under the Shipping Act by attempting to compare themselves to taxicabs.

IV. CONCLUSION

Complainants’ claims in this proceeding are moot. The Tariff provisions they complain of no longer exist. Under the Board of Trustees’ Tariff Circular No. 6, Item No. 111, all persons entering Port property for commercial purposes are assessed access fees the same way, on a per trip basis. Their other claims relating to where they may drop customers off at, and where they enter, Port property, are under the jurisdiction of the

¹⁴ See *Id.* at §35-11(a).

¹⁵ See *Id.* at §35-4.

¹⁶ See the Affidavit of Cecil Stroud, attached hereto.

Department of Homeland Security. Finally, their shuttle buses are not taxicabs offered for hire. Accordingly, this case should be dismissed.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the Complainant in this proceeding be resolved as follows:

1. The Complainants take nothing on their Complaint filed herein;
2. The Complaint to be dismissed as to both Respondents.
3. For such other and further relief as the Commission may deem just and proper.

Dated: October 21, 2014

Respectfully submitted,

McLeod, Alexander, Powel & Apffel, P.C.

By: 

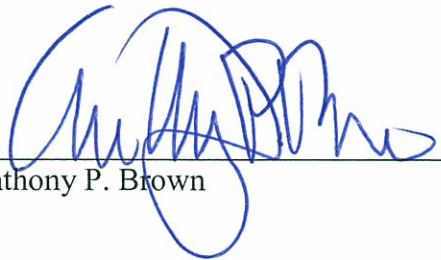
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Texas State Bar No. 03091300
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ATTORNEYS FOR THE BOARD OF
TRUSTEES OF THE GALVESTON
WHARVES

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October, 2014, a copy of the foregoing document was served by certified United States mail, return receipt requested on Complainants' counsel of record.

Douglas T. Gilman
Gilman & Allison, LLP
2005 Cullen Blvd.
Pearland, Texas 77581



Anthony P. Brown

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC.
d/b/a EZ CRUISE PARKING; LIGHTHOUSE
PARKING, INC.; and SYLVIA ROBLEDO d/b/a 81ST
DOLPHIN PARKING**

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT
FACILITIES CORPORATION**

AFFIDAVIT OF MICHAEL MIERZWA

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

BEFORE ME, the undersigned notary public on this day personally appeared Michael Mierzwa, who known to me and being duly sworn, declared and stated as follows:

1. "I am over 18 years of age and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated in this Affidavit, which are all true and correct.
2. I am employed as the Port Director for the Board of Trustees of The Galveston Wharves, which is also known as the Port of Galveston (referred to hereafter as "The Port."). Additionally, I am the President of The Galveston Port Facilities Corporation.
3. I have read the Motion to Dismiss to which this Affidavit will be attached. The facts stated in the Motion to Dismiss are true and correct.
4. Attached hereto as Exhibit 1 is a true and correct copy of The Port's Tariff Circular No. 6, Item No. 111, as revised by the Board of Trustees at its public meeting held on

September 22, 2014. The rate changes therein are effective October 1, 2014. The amendment eliminates the per-space parking rate for Off-Port Parking Users. Additionally, the Off-Port Parking User rate increase adopted by the Board of Trustees in May 2014 will not be charged the Complainants or others who were charged Off-Port Parking User access fees. Rather, the per-space rate of \$8 will be assessed for each month prior to October 1, 2014, and refunds will be issued to any persons who paid hire amounts.

5. The separate category for Off-Port Parking Users had been established by a 2006 Amendment to Tariff Circular No. 6 Item 111. The 2006 amendment was adopted at the request of Complainant Santa Fe Cruise Parking, Inc. dba EZ Cruise Parking. Thereafter, all Complainants operated as "Off-Port Parking Users" under Tariff Circular No. 6 Item 111 and paid access fees based on a rate of \$8.00 per space per month. Complainants have paid these amounts every month without protest since 2006.
6. In May 2014, The Port's Board of Trustees increased the access fees charged to Off-Port Parking Users from \$8.00 to \$28.88 per parking space, effective July 1, 2014. Complainants then filed this proceeding, as well as an ancillary proceeding in Federal District Court. Under an Agreed Interim Order, Complainants have been paying The Port \$8 per parking space as their monthly access fees, and have deposited the balance under the May 2014 amendment (i.e. \$20.88 per parking space per month) into the registry of the United States District Court for the Southern District of Texas, Houston Division in Case No. G-14-CV-206; Robledo, et al. v The Board of Trustees of the Galveston Wharves, et al. Given the recent amendment to the Tariff discussed above, The Port does not object to the amounts paid into the Court Registry being returned to Complainants.
7. Attached hereto as Exhibit 2 is the access flow plan adopted by the Port of Galveston to allow non-Port operated commercial and non-commercial vehicles to access the Cruise Terminal. This allows vehicles to enter the Cruise Terminal in order to pick up or drop off passengers, and to load or unload luggage through a central, controlled location. This access flow plan was designated by the Port of Galveston to provide a steady, secure traffic flow for efficient operations consistent with its security plan under applicable Homeland Security and U.S. Coast Guard regulations. The Port has designated the entrance located at 22nd and Harborside Drive (Hwy 275) as the designated access area for all non-port vehicles entering the Cruise Terminal for the purposes described above. Unlike the Complainants' customers, passengers who use Port-operated parking lots typically enter Port property through the 22nd Street entrance, drop off their luggage, and then proceed west in their vehicles to the Port parking lots.
8. During the course of these proceedings, the Port negotiated with the Complainants regarding Tariff Circular No. 6 Item 111, and attended an expedited mediation. Complainants appeared and spoke at the May 2014 and September 2014 public

meetings of the Port's Board of Trustees when amendments to this Tariff Item were being considered.

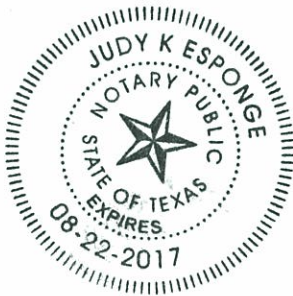
9. Neither The Port nor the Galveston Port Facilities Corporation levy any type of taxes, and receive no tax support or subsidies from the City of Galveston.

Further affiant sayeth not.



Michael Mierzwa

16th SUBSCRIBED AND SWORN TO BEFORE ME the undersigned Notary on this day of October, 2014, by Michael Mierzwa, to certify which witness my hand and official seal.





Notary Public, State of Texas

EXHIBIT 1 – SEPTEMBER 22, 2014 AMENDMENTS TO TARIFF NO. 6

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES
Tariff Circular No. 6

124th Revised Page 3-C

ISSUED: ~~NOVEMBER 21, 2013~~ SEPTEMBER 22, 2014

EFFECTIVE:

SEPTEMBER 22, 2014 ~~NOVEMBER 21, 2013~~

SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION

ITEM

The request for renewal may be granted or denied, or granted with such limitations and restrictions deemed appropriate by the Board of Trustees of the Galveston Wharves.

If such request for renewal and responsive information, along with the annual license fee, is not received by the deadline described above, the license will expire at midnight, December 31st.

In the event of expiration or termination of a stevedore license, the Board of Trustees may, as deemed appropriate, notify all known customers of the stevedore and other users of the Port of Galveston of the respective stevedore license expiration or termination.

A licensee wishing to reinstate its Stevedore License after expiration or termination must submit a new application in its entirety, accompanied by the respective application processing fee, unless the Board of Trustees of the Galveston Wharves, in its discretion, waives this requirement.

Non-Transferability of License

No license shall be transferred or assigned to or otherwise used by any person other than the named licensee without the prior written approval of the Galveston Wharves. Any person, firm, corporation or other business entity properly acquiring all or substantially all of the stevedoring business assets from a licensee hereunder may qualify for a license by conforming to the Stevedore License Application requirements of this Tariff Item.

OTHER LICENSES AND PERMITS

(C)(A)(I) 111

Port and Cruise Terminal Use and Parking Permits and Fees

Applications for Port Use Permits are to be submitted to the Galveston Wharves using Application Forms, which are available at the Offices of the Galveston Wharves. An initial fee and annual renewal fee are required for the following categories of business conducting activities on or in connection with the property of the Galveston Wharves:

1. Commercial Business Entities not operating under a Lease Agreement, Berthing Agreement, Operating Agreement, Operating or Terminal Services Agreement or Concession Agreement with the Galveston Wharves or the Galveston Port Facilities Corporation.
Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00
2. Commercial Passenger Vehicle Service with more than two (2) vehicles providing access for people to the Galveston Wharves and the Cruise Ship Terminal Complex. (Not operated or controlled by or under contract for transportation services with the Galveston Wharves) (Notes A, C, D & E)
Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00
3. Commercial Passenger Vehicle Services with two (2) or fewer vehicles providing access for people to the Galveston Wharves and the Cruise Ship Terminal Complex. (Not operated or controlled by or under contract for transportation services with the Galveston Wharves) (Notes A, C, D & E)
Initial Application Fee: \$120.00 Annual Renewal Fee: \$50.00

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES
Tariff Circular No. 6

Item No. 111 continued on the next page.

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES
Tariff Circular No. 6

~~7TH~~-12TH Revised Page 3-D

ISSUED: ~~SEPTEMBER 22, 2014~~ ~~NOVEMBER 21, 2013~~
EFFECTIVE: ~~SEPTEMBER 22, 2014~~ ~~NOVEMBER 21, 2013~~

SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
4. Mobile Food and/or Merchandise Vendors Initial Application Fee: \$120.00 Annual Renewal Fee: \$50.00	
5. Common Carriers by Water of Passengers (Water Taxi Service) Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00	
6. Organizations performing Oil Waste, Bilge Water and Gray Water Removal Service Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00	
7. Organizations performing Sanitary and Solid Waste Removal Services Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00	
8. Organizations performing the services of Line Handling for vessels. Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00	Persons operating
9. Pneumatic Trucks handling Plastic Polymer Pellets Initial Application Fee: \$300.00 Annual Renewal Fee: \$75.00	

In addition to the application and Port Use Permit fee, all applications must be accompanied by a Certificate of Insurance showing proof of insurance, not less than that required in Item 600 of this Tariff, and meeting all other requirements found in Item 600 of this Tariff, except as noted in "Note B", below. The Insured party must be the same name as the Applicant and the Taxpayer Identification registered with the Texas Secretary of State and the Texas Comptroller of Public Accounts for the named business entity. The City of Galveston and the Board of Trustees of the Galveston Wharves must also be named as "Additional Insureds" with Waiver of Subrogation.

Port Use Permits are to be issued for a period of one (1) year beginning January 1st and ending December 31st. New businesses requiring Port Use Permits within three months of ~~the above expiration date~~ December 31 will be issued ~~such permits to extend which will be effective until~~ December 31 of the following year,

Note A. A separate Port Use Permit must be obtained for each of the business categories, named above, in which any business entity is engaged.

Note B. The following insurance requirements defined in the City of Galveston Ordinances, as may be amended from time to time, which are applicable to Commercial Vehicles for Hire, are incorporated into this Tariff Circular and apply to the respective types of vehicles referenced in the ordinance section heading (See also: www.cityofgalveston.org). The Port reserves the right to modify certain liability and other insurance requirements as deemed necessary based on a review of the applicant and type of business. License holders and Port Use Permit holders shall, in addition to the notice-to-the-City requirement in the City Ordinance, notify the Port in all instances in which the Ordinance requires notice to the City.

Sec. 35-54. Insurance-taxicabs.

Every holder of a license to operate a taxicab service pursuant to the provisions of this chapter shall maintain in full force and effect at all times a policy or policies of automobile liability and property damage insurance, with an insurance

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES
Tariff Circular No. 6

Item No. 111 continued on the next page.

65TH Revised Page 3-E

ISSUED: ~~SEPTEMBER 22, 2014~~~~NOVEMBER 21, 2013~~

EFFECTIVE:

~~SEPTEMBER 22, 2014~~~~NOVEMBER 21, 2013~~

SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
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company or companies authorized to do business in Texas, covering each vehicle so used, in an amount not less than the minimum coverage required by state law. No taxicab permit shall be issued or renewed unless the applicant has obtained for the vehicle involved an automobile liability insurance policy with an insurance company or companies authorized to do business in Texas with minimum limits as prescribed pursuant to state law. The applicant prior to issuance or renewal of the permit shall furnish satisfactory proof of such coverage. Said policy shall contain a clause requiring thirty (30) days notice be given to the city prior to cancellation. If such notice of cancellation is given by the insurance company, the licensee shall obtain new insurance before meeting the requirements of this section prior to the expiration of the 30-day period; if the license fails to do so his permit shall be immediately revoked.
(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-55. Insurance-limousines.

Every holder of a license to operate a limousine service pursuant to the provisions of this chapter shall maintain in full force and effect at all times a policy or policies of automobile liability and property damage insurance with an insurance company or companies authorized to do business in Texas, covering each vehicle so used, in an amount not less than five hundred thousand dollars (\$500,000.00) combined single limits. No limousine permit shall be issued or renewed unless the applicant has obtained for the vehicle involved an automobile liability insurance policy with an insurance company or companies authorized to do business in Texas with the required coverage. An applicant prior to the issuance or renewal of annual permit shall furnish satisfactory proof of such coverage. The holder shall furnish proof of such coverage by filing with the director a valid certificate of insurance, or in lieu thereof a true multiple original of any such policy. The policy shall contain a clause requiring thirty (30) days' notice be given to the city prior to cancellation. If the insurance company gives such notice of cancellation, the holder shall obtain new insurance before the expiration of the 30-day period; if the holder fails to do so his permit shall be immediately revoked.

(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-56. Insurance-buses and shuttles.

Every holder of a license to operate a bus or shuttle vehicle service pursuant to the provisions of this chapter shall maintain in full force and effect at all times a policy or policies of automobile liability and property damage insurance with an insurance company or companies authorized to do business in Texas, covering

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each vehicle so used, in an amount not less than five hundred thousand dollars

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ISSUED: ~~SEPTEMBER 22, 2014~~~~MAY 19, 2014~~

EFFECTIVE: ~~SEPTEMBER 22, 2014~~~~JULY 1, 2014~~

SECTION 100 – GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
	(\$500,000.00) combined single limits. No bus or shuttle vehicle permit shall be issued or renewed unless the applicant has obtained for the vehicle involved an automobile liability insurance policy with an insurance company or companies authorized to do business in Texas with the required coverage. An applicant prior to the issuance or renewal of annual permit shall furnish satisfactory proof of such coverage. The holder shall furnish proof of such coverage by filing with the director a valid certificate of insurance, or in lieu thereof a true multiple original of any such policy. The policy shall contain a clause requiring thirty (30) days' notice be given to the city prior to cancellation. If the insurance company gives such notice of cancellation, the holder shall obtain new insurance before the expiration of the 30-day period; if the holder fails to do so his permit shall be immediately revoked. (Ord. No. 02-058, § 3, 6-27-02)

Note C. In addition to the annual Port Use Permit fee, ground transportation companies, as defined herein, accessing Cruise Terminal 1/ Texas Cruise Ship Terminal on Galveston Island®, or Cruise Terminal 2 / Texas Cruise Ship Terminal at Pier 27, collectively the Cruise Ship Terminal Complex, shall be subject to the following decal and/or access fees for each vehicle that shall have such access:

Type of Vehicle and Vehicle
Seating Capacity:

Decal and Access Charge:

Charter Bus Owners and Operators
(**~~Except as As~~ noted in Notes D & E, below)

\$60.00 Parking Fee

Commercial Passenger Vehicle, Courtesy
Vehicle, Shuttle or Limousine with
Seating Capacity of fifteen (15) persons or more
(**~~Except as noted in Notes D & E, below~~)

\$25.00 per decal per vehicle annually and
\$30.00 per Access / Trip

Commercial Passenger Vehicle, Courtesy
Vehicle, Shuttle or Limousine with
Seating Capacity of less than fifteen
(15) persons
(**~~Except as noted in Notes D & E, below~~)

\$15.00 per decal per vehicle, annually and
\$20.00 per Access / Trip

Taxicabs with City of Galveston permit

\$7.50 per decal per vehicle, annually

Note D. ~~Prior to October 1, 2014, those~~ **Off-Port Parking Users**, as defined herein, in operation and accessing the Texas Cruise Ship Terminal on Galveston Island®, or the Texas Cruise Ship Terminal at Pier 27, collectively the Cruise Ship

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Terminal Complex, shall, in lieu of the Access/ Trip fee, be subject to a monthly Access Fee equal to the amount of ~~\$28.888.00~~ per parking space located in the Off-Port Parking User's parking

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ISSUED: ~~SEPTEMBER 22, 2014~~ MAY 19, 2014

EFFECTIVE: ~~SEPTEMBER 22, 2014~~ JULY 1, 2014

SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
Note D.	<p>facility, with number of billable parking spaces to be confirmed periodically by the Galveston Wharves. In addition, Off-Port Parking Users shall pay a decal fee of \$15.00 per decal per shuttle vehicle annually. This Access Fee and decal fee will be effective on and after July until October 1, 2014 and will be subject to periodic adjustment by the Board of Trustees of the Galveston Wharves.</p> <p>Beginning on October 1, 2014, all Off-Port Parking Users, as defined herein, shall be governed by the Provisions of Note C above.</p> <p>In addition, Off-Port Parking Users shall pay a decal fee of \$15.00 per decal per shuttle annually. The Galveston Wharves will provide all Off-Port Parking Users to whom the Access Fee applies with notice of each adjustment to the Access Fee and the calculation of the adjustment no later than 30 days prior to the date of any effective increase.</p>
Note E.	<p>Parking Fees – Those Charter Bus Owners and Operators, as defined herein, in operation and accessing the Texas Cruise Ship Terminal on Galveston Island®, or the Texas Cruise Ship Terminal at Pier 27, collectively the Cruise Ship Terminal Complex, as of July 1, 2014 shall, in lieu of the payment of Initial Application and Renewal Fees for Port Use Permits, Decal Fees and/or the Access/ Trip fee, be subject to a Parking Fee equal to the amount of \$60.00 per each use of any bus parking space located in the Cruise Ship Terminal Complex. Charter Bus <u>Owners and</u> Operators must provide sufficient advance notification to the Port, Attention of the Director of Administration, in advance of arrival at the Port to allow for review of the existence and sufficiency of the required insurance. Additionally, payment shall be made by check on arrival at the Cruise Ship Terminal Complex, unless prior acceptable payment arrangements have been made in advance with the Port.</p>

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Payment of Fees:

Payment of fees for initial application for Port Use Permit and for renewal of Port Use Permits is due upon submission of the completed application for such permit in person, e-mail or by mail at the Administrative Offices of the Port of Galveston. Extension of Credit, issuance of invoices for payment of fees and payment of all fees other than application fees due to the Galveston Wharves will be made in accordance with the provisions of Section 100 of Tariff Circular No. 6, Items No. 192, 194, 196 and 198. Decals will be issued to the person at the time the application is delivered to the Port or mailed to Port Use Permit applicants, at the mailing address noted on the application, upon approval of the Port Use Permit application by the Galveston Wharves.

Suspension or Revocation of Port Use Permits will be in accordance with the terms of Item #112 of Tariff Circular No. 6, as it may be amended from time to time.

Definitions:

BOARD OF TRUSTEES
OF THE GALVESTON WHARVES

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(1) **ACCESS** means to enter upon premises owned, operated or controlled by the Board of Trustees of the Galveston Wharves.

(2) **BILLABLE PARKING SPACES** means the number equal to the maximum parking capacity of the off-port parking user's lot.

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EFFECTIVE: ~~SEPTEMBER 22, 2014~~ JULY 1, 2014

SECTION 100 – GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
(3)	BUS means a motor vehicle operated for commercial purposes that: (A) has manufacturer's rated seating capacity of more than fifteen (15) passengers (including the driver); and (B) is used for the transportation of people.
(4)	BUS SERVICE means the business of offering or providing transportation of people for hire by bus, whether the fare is paid by individuals boarding the bus or by contract with or for a specified group or people, when: (A) a driver or referral to a driver is furnished as part of the service; and (B) the service is offered either as a charter bus service or a special bus service.
(5)	<u>CHARTER BUS OWNER AND OPERATOR means the Owner or Operator of a Charter Bus Service.</u>
(56)	CHARTER BUS SERVICE means a bus service for the transport of people belonging to a specified group that is offered only upon a prearranged basis, the prearrangement being made at least one hour in advance of the time the transportation is to begin.
(67)	COMMERCIAL BUSINESS ENTITY means any Person, as defined in this section, engaged in commercial, industrial or institutional operations in connection with which money or anything of value is paid, demanded or expected by passengers, customers, or other users, but does not include the federal government of the United States, the State of Texas, the City of Galveston, the Galveston Wharves or any of their departments, agencies or political subdivisions (unless they provide, as their primary function, ground transportation of passengers in exchange for fares or charges).
(78)	COMMERCIAL PASSENGER VEHICLE means a vehicle not otherwise defined in this Tariff while it is used, or offered (orally or in a writing or sign) to be used, to transport one or more people, on land, either: (A) in exchange for a fare, charge, or other thing of value (paid, demanded, or expected for the transportation service, in whole or in part, directly or indirectly, by the person transported or by another person, or otherwise); or (B) in connection with the operations of a commercial business entity, regardless of whether a fare, charge, or other thing of value is paid, demanded or expected for the transportation service.
It shall be a presumption that a vehicle bearing the name, trade name, common name, emblem, trademark or other identification of a commercial business entity and being used to transport a passenger is a commercial passenger vehicle.	
(89)	COURTESY VEHICLE means a commercial passenger vehicle that meets all of the following criteria at all times when it is operated on property owned, leased or controlled by the Galveston Wharves: (A) The vehicle is owned or provided by one or more commercial business entities that: (i) arrange for the vehicle to provide transportation only incidentally to the

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BOARD OF TRUSTEES
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commercial business entities' primary businesses or activities, which may, for example,
be off-port car rental user, off-port parking user, lodging, air transportation, special

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ISSUED: ~~SEPTEMBER 22, 2014~~ MAY 19, 2014

EFFECTIVE: ~~SEPTEMBER 22, 2014~~ JULY 1, 2014

SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION	ITEM
	events or medical care; (ii) provide the vehicle, by purchase or lease or by contracting with another party (which party may or may not be primarily in the business of providing ground transportation); and (iii) all sign the application for the Port Use License and/or Port Use Permit for Vehicle, as applicants or co-applicants.
(B)	The vehicle is provided for the exclusive use of officers, agents, employees, customers or invitees of any of the commercial business entities.
(C)	There is no fare, charge or thing of value paid, demanded or expected from the people transported, directly or indirectly, for transportation, and this is effectively communicated to the traveling public. (Example: An increase in the charge for lodging or for an event could be an indirect charge, if related to transportation.)
(910)	GROUND TRANSPORTATION COMPANY means any Person (other than the Galveston Wharves or any Person or entity under contract to provide transportation services for the Galveston Wharves) owning or operating the following types of vehicles as defined in this section: commercial passenger vehicle, bus, bus service, charter bus, courtesy vehicle, shuttle, limousine, taxi or taxicab service.
(4011)	LIMOUSINE means a motor vehicle operated for commercial purposes that shall not have a taximeter, which is a luxury sedan with a manufacturer's rated seating capacity of not more than fifteen (15) passengers that is used for the transportation of people.
(4412)	OFF-PORT PARKING USER means a commercial business entity which provides or arranges for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers within a terminal complex of the Galveston Wharves in connection with the operations of a business of the user involving the parking of motor vehicles of any type at a facility located outside of the boundaries of property owned, operated or controlled by the Galveston Wharves.
(4213)	OFF-PORT RENTAL CAR USER means a commercial business entity which provides or arranges for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers within a terminal complex of the Galveston Wharves in connection with a business of the user involving the renting of motor vehicles, all under circumstances where the user does not have a contract or lease with the Galveston Wharves for the use of counter space within the terminal complex.
(4314)	ON-PORT RENTAL CAR USER means a commercial business entity which may provide or arrange for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers within a terminal complex of the Galveston Wharves in connection with a business of the user involving the renting of motor vehicles, under circumstances where the user has a contract or lease with the Galveston Wharves for counter space, kiosk or other location within the terminal complex.
(4415)	OPERATE means to drive or to be in control of a taxicab, limousine, bus, courtesy vehicle, shuttle or commercial passenger vehicle.
(45)	OWNER means the person to whom state license plates for a vehicle were issued.

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3rd 4th Revised Page 3-J

ISSUED: ~~SEPTEMBER 22, 2014~~ MAY 19, 2014

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SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION

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(16) **OPERATING AUTHORITY** means written permission or licensing granted on an annual basis by the Port Director under this section.

(17) **OPERATOR** means ~~the owner of a~~ Person who operates a taxicab, limousine, bus, courtesy vehicle, shuttle or commercial passenger vehicle; or the holder of a taxicab, limousine, bus, courtesy vehicle or shuttle operating authority.

~~(1518)~~ **OWNER** means the person to whom state license plates for a vehicle were issued.

(1819) **PERSON** means any natural person or any entity, whether organized for profit or not, that is a corporation, limited or general partnership, limited liability company, sole proprietorship, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, trust, insurance company or other legal entity or combination organized pursuant to or recognized under the laws of Texas or any other state or country.

(1920) **PORT USE PERMIT** means a valid (not suspended or revoked) and unexpired permit issued by the Port Director pursuant to this Tariff Item. A Port Use permit contains terms and conditions as described herein, or as may be amended from time to time. A Port Use Permit grants privileges (e.g., using Galveston Wharves property for commercial purposes, supplying services at the Galveston Wharves (Port of Galveston) for which fees are imposed. Both Port Use Permits and the more specialized contracts or leases mentioned in this Tariff are types of contracts.

(2021) **SHUTTLE** means a van-type motor vehicle operated for commercial purposes that does not have a taximeter, that has a manufacturer's rated seating capacity of less than fifteen (15) passengers and is used for the transportation of people.

(2122) **TAXI OR TAXICAB** means a chauffeured motor vehicle, but not including limousines, that is equipped with a taximeter, and that has a typical rated passenger capacity of eight (8) passengers or less, used for the transportation of passengers for hire over the public streets of the city that typically operates on irregular routes, irregular schedules, and a call and demand basis, and irrespective of whether or not the operations extend beyond the city limits, at rates for distance traveled, or for waiting time, or for both, or at rates per hour, per day, per week, or per month and such vehicle is routed under the direction of the passenger hiring the same.

(2223) **TAXICAB, LIMOUSINE, BUS OR SHUTTLE SERVICE** means a passenger transportation service operated for hire that uses any one or more of the following vehicle types: taxicabs, limousines, buses, or shuttles in the operation of the service and includes (but is not limited to) a facility from which the service is operated; taxicabs, limousines, buses, or shuttles used in the operation; and a person who owns, controls, or operates the service.

(2324) **TAXIMETER** means a device that mechanically or electronically computes a fare based upon the distance traveled, the time the taxicab is engaged, and any other basis for charges which are specified in the operating authority or rate ordinance pertaining to the holder.

(2425) **CRUISE SHIP TERMINAL COMPLEX** means that area within the boundaries of property owned, leased or controlled by the Galveston Wharves located within 400 feet of a passenger terminal building (or any part thereof). The Cruise Ship Terminal Complex is also

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BOARD OF TRUSTEES
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Item No. 111 continued on the next page.

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ISSUED: ~~SEPTEMBER 22, 2014~~ MAY 19, 2014

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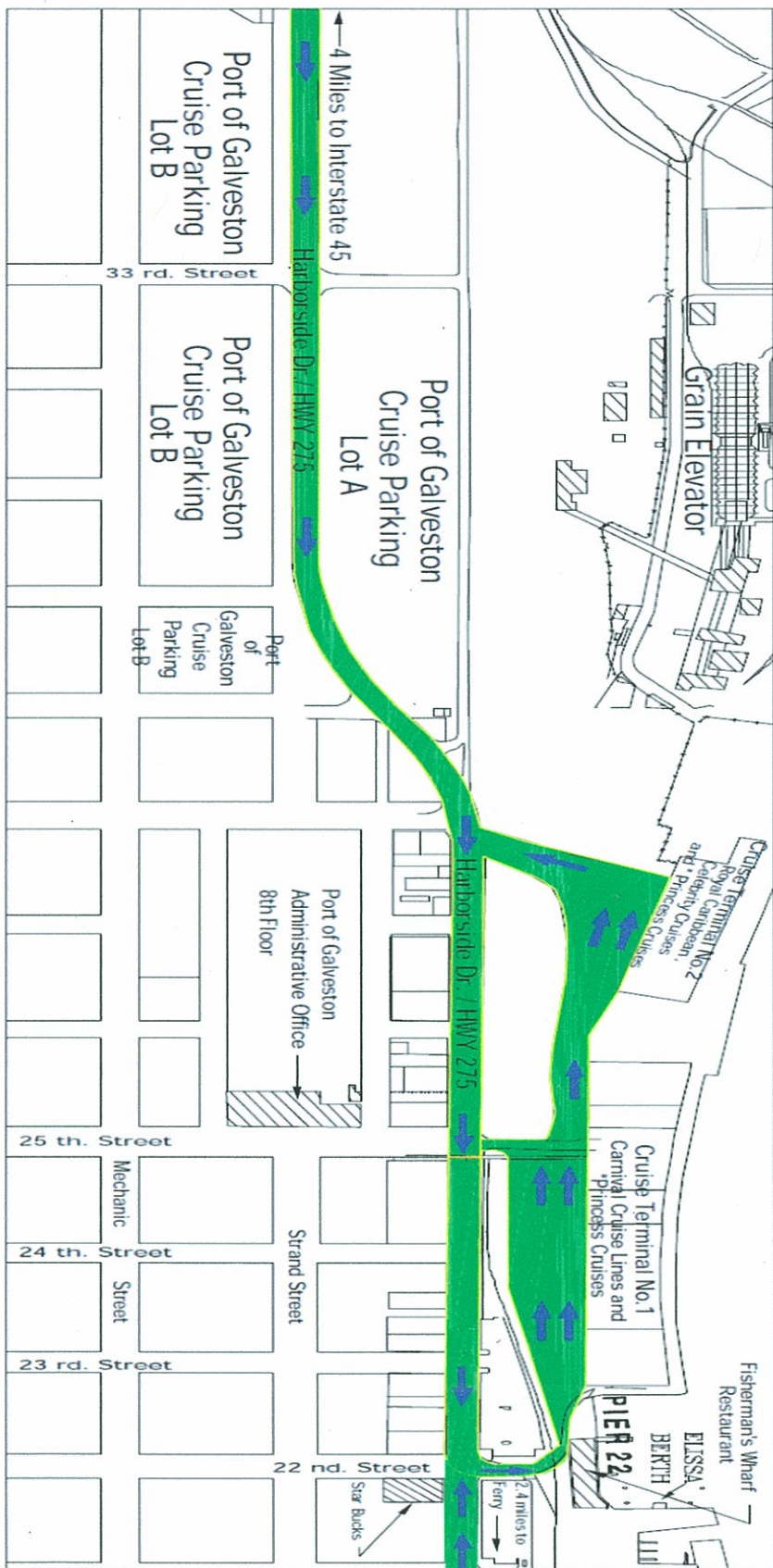
SECTION 100 - GENERAL INFORMATION, RULES AND REGULATIONS

APPLICATION

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known and referred to as the Texas Cruise Ship Terminal on Galveston Island® or the Texas Cruise Ship Terminal at Pier 27. The Port Director may promulgate a map or other description of a terminal complex, and it shall be a presumption that the boundaries of the terminal complex are as so promulgated by the Port Director.

**EXHIBIT 2 – PORT OF GALVESTON DESIGNATED PASSENGER ACCESS
FOR CRUISE TERMINAL**



*Princess Cruises Alternates
Between Cruise Terminal No.1
And Cruise Terminal No. 2

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and
SYLVIA ROBLEDO d/b/a 81ST DOLPHIN PARKING**

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT FACILITIES
CORPORATION**

AFFIDAVIT OF ANTHONY P. BROWN

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

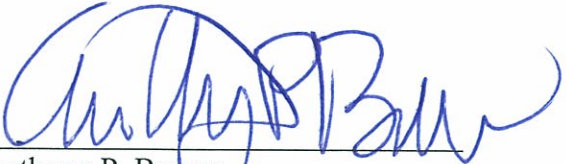
BEFORE ME, the undersigned notary public on this day personally appeared Anthony P. Brown, who known to me and being duly sworn, declared and stated as follows:

“I am over eighteen (18) years of age and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated in this Affidavit, which are all true and correct.

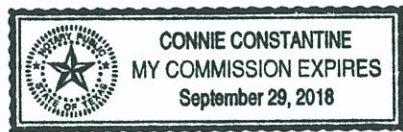
I am an attorney of record for Respondents, the Board of Trustees of the Galveston Wharves and Galveston Port Facilities Corporation in the above-referenced proceeding.

Attached hereto are certain sections of Chapter 35 of the Code of the City of Galveston, which are referenced in Respondents’ Motion to Dismiss, filed concurrently in this cause. These sections were downloaded from the web site provided by the City of Galveston, located at www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI.

Further affiant sayeth not.


Anthony P. Brown

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned Notary on this 21st day
of October, 2014, by Anthony P. Brown, to certify which witness my hand and official seal.




Notary Public, State of Texas

Chapter 35 - VEHICLES FOR HIRE

FOOTNOTE(S):

--- (1) ---

Editor's note— Ord. No. 02-058, §§ 2—4, adopted June 27, 2002, amended ch. 35 in its entirety to read as herein set out. Formerly, ch. 35 pertained to similar subject matter and derived from the Code of 1960, §§ 22-1—22-11, 22-13, 22-15, 22-16, 22-20, 22-22—22-27, 22-29—22-35, 22-37—22-38, 22-40—22-45, 22-47, 22-48, 22-50, 22-51, 22-53—22-62, 22-64, 22-65, 22-67—22-74, 22-76—22-79, 22-83; Ord. No. 79-68, § 1, adopted August 23, 1979; Ord. No. 80-37, § 1, adopted April 17, 1980; Ord. No. 81-7, § 2, adopted February 12, 1981; Ord. No. 82-28, § 2, adopted March 25, 1982; Ord. No. 84-63, § 1, adopted August 30, 1984; Ord. No. 85-52, § 1, adopted August 22, 1985; Ord. No. 85-57, §§ 1—3, adopted September 12, 1985; Ord. No. 86-53, § 1, adopted October 30, 1986; Ord. No. 88-64, § 1, adopted July 7, 1988; Ord. No. 89-75, §§ 2, 3, adopted June 8, 1989; Ord. No. 89-98, § 2, adopted July 27, 1989; Ord. No. 94-77, § 2, adopted December 8, 1994; Ord. No. 97-96, §§ 2—9, adopted November 13, 1997; Ord. No. 98-13, § 2, adopted March 12, 1998.

Cross reference— Ambulances, Ch. 5; vehicles on beaches, § 8-3; traffic, Ch. 34; wreckers, Ch. 37.

ARTICLE I. - TAXICABS, LIMOUSINES, BUSES, SHUTTLES, PEDICABS, AND HORSE DRAWN CARRIAGES

FOOTNOTE(S):

--- (2) ---

Editor's note— Ord. No. 14-048, § 2, adopted August 14, 2014 (), amended the title of art. I to read as set out herein. Previously art. I was titled taxicabs, limousines, buses, shuttles, and pedicabs.

DIVISION 1. - GENERAL PROVISIONS

Sec. 35-1. - Statement of policy.

It is the policy of the city to provide for and to promote adequate and efficient taxicab, limousine, bus, shuttle, pedicab, and horse drawn carriage services in the city. To this end, this chapter provides for the regulation of taxicab, limousine, bus, shuttle, pedicab, and horse drawn carriage rates and services, to be carried out in a manner that protects the public health and safety, promotes the public convenience and necessity, and respects the concept of free enterprise.

(Ord. No. 02-058, § 3, 6-27-02; Ord. No. 13-039, § 2, 7-11-13 (); Ord. No. 14-048, § 2, 8-14-14 ())

Sec. 35-2. - General authority and duty of director.

The city manager and his delegates who include a director and a taxicab inspector shall enforce the provisions of this chapter. The director shall implement and enforce this chapter as he determines necessary to discharge his duty under, or to effect the policy of this chapter.

(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-3. - Exclusions.

This chapter does not apply to:

(9) A vehicle owned by a nonprofit organization and carrying only passengers associated with that organization, if no compensation is received from any other person for carrying the passengers.

(10) The prearranged transportation of persons by limousine, bus, or shuttle licensed by another governmental entity from a point outside of the city limits to the Port of Galveston Cruise Ship Terminals and/or departing said cruise ship terminals to a drop-off point outside the city limits.

(11) The provisions of this chapter regarding pedicabs shall not apply to bicycle rentals or bicycle tours in which the customer pedals the bicycle on which he or she rides and are not, therefore, chauffeured by another person.

(Ord. No. 02-058, § 3, 6-27-02; Ord. No. 05-023, § 2, 4-22-05; Ord. No. 13-039, § 2, 7-11-13 ())

Sec. 35-4. - Definitions.

The definition of a term in this section applies to each grammatical variation of the term. In this chapter, unless the context requires a different definition:

Annual permit means permission granted by the city to a person to operate a taxicab, limousine, bus, shuttle service, or pedicab inside the city for a period of one (1) year, renewable under the provisions of this chapter.

Bus means a motor vehicle that shall not have a taximeter, that:

- (1) Has a manufacturer's rated seating capacity of more than fifteen (15) passengers (including the driver); and
- (2) Is used for the transportation of persons from a location in the city to another location either inside or outside the city.

Bus service means the business of offering or providing transportation of persons for hire by bus, whether the fare is paid by individuals boarding the bus or by contract with or for a specified group of persons, when:

- (1) A driver or referral to a driver is furnished as part of the service; and
- (2) The service is offered either as a charter bus service or a special bus service.

Charter bus service means a bus service for the transport of persons belonging to a specified group that is:

- (1) Offered only upon a prearranged basis, the prearrangement being made at least one (1) hour in advance of the time the transportation is to begin; and
- (2) Operated from locations within the city to locations either inside or outside the city.

City chauffeur's license means a license issued to an individual by the director authorizing that individual to drive or operate a taxicab, limousine, bus, shuttle, pedicab, or horse drawn carriage vehicle for hire in the city.

Conviction means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

Curb means the raised edge of the street, driveway or other public or private way upon which a taxicab is operating, provided that if no raised edge curbing exists, then it means the edge of the area that is paved for vehicular operation.

Department means the city police department, as designated by the city manager to enforce and administer this chapter.

Director means the chief of police as the director of the department designated by the city manager to enforce and administer this chapter and includes representatives, agents, or department employees designated by the director.

Dispatching facility means a fixed facility:

- (1) At which requests for taxicab, limousine, bus, shuttle, or pedicab service, are received;
- (2) From which drivers are notified, by radio or any other electronic communication system, of requests for taxicab, limousine, bus shuttle, or pedicab service; and
- (3) To which drivers communicate, by radio or any other electronic communication system, their availability to provide the requested taxicab, limousine, bus shuttle, or pedicab service.
- (4) Except when being operated from the permanent and established place of business required under section 35-15 (), the term does not include any facility from which the primary administrative operations of the taxicab, limousine, shuttle, or pedicab service are conducted or at which taxicabs are parked, stored, repaired, or maintained.

Driver means an individual who drives or operates a taxicab, limousine, bus, shuttle, pedicab, or horse drawn carriage.

Holder means a person who is granted an annual permit providing operating authority under this chapter.

Lawful order means a verbal or written directive issued by the city manager, the director, or his representatives, to include city police department officers, or the taxicab inspector in the performance of official duties in the enforcement of this chapter and any rules and regulations promulgated under this chapter.

Legal resident means a citizen of the United States or a person residing in the United States in accordance with federal immigration laws.

Limousine means a motor vehicle that shall not have a taximeter, that is a luxury sedan with a manufacturer's rated seating capacity of not more than fifteen (15) passengers that is used for the transportation of persons from a location in the city to another location either inside or outside the city.

Operate means to drive or to be in control of a taxicab, limousine, bus, shuttle, pedicab, or

horse drawn carriage.

Operating authority means written permission granted on an annual basis by the director under this chapter to operate a taxicab, limousine, bus, shuttle service, or pedicab.

Operator means the driver of a taxicab, limousine, bus, shuttle, pedicab, or horse drawn carriage vehicle; the owner of a taxicab, limousine, bus, shuttle, pedicab, or horse drawn carriage; or the holder of a taxicab, limousine, bus, shuttle, or pedicab operating authority.

Owner means the person to whom state license plates for a vehicle were issued.

Pedicab means a chauffeured non-motorized vehicle used for the transportation of passengers for hire over the public streets of the city.

Person means an individual; corporation; government or governmental subdivision; or agency, trust, partnership, or two (2) or more persons having a joint or common economic interest.

Shuttle means a van-type motor vehicle that shall not have a taximeter, that has a manufacturer's rated seating capacity of not less than seven (7) passengers and not more than fifteen (15) passengers and is used for the transportation of persons from a location in the city to another location either inside or outside the city.

Taxicab means a chauffeured motor vehicle, but not including limousines, that is equipped with a taximeter, and that has a rated passenger capacity of eight (8) or less, used for the transportation of passengers for hire over the public streets of the city that typically operates on irregular routes, irregular schedules, and a call-and-demand basis, and irrespective of whether or not the operations extend beyond the city limits, at rates for distance traveled, or for waiting time, or for both, or at rates per hour, per day, per week, or per month and such vehicle is routed under the direction of the passenger hiring the same. The term does not include vehicles operated exclusively under any special contract carrying to or from any municipal airport to any point within the city, or through any part of the city.

Taxicab, limousine, bus, shuttle, or pedicab service means a passenger transportation service operated for hire that uses any one (1) or more of the following vehicle types: taxicabs, limousines, buses, shuttles, or pedicabs in the operation of the service and includes (but is not limited to) a facility from which the service is operated; taxicabs, limousines, buses, shuttles, or pedicabs used in the operation; and a person who owns, controls, or operates the service.

Taxicab stand means a public place reserved exclusively for use by taxicabs.

Taximeter means a device that mechanically or electronically computes a fare based upon the distance traveled, the time the taxicab is engaged, and any other basis for charges which are specified in the operating authority or rate ordinance pertaining to the holder.

(Ord. No. 02-058, § 3, 6-27-02; Ord. No. 11-018, § 2, 3-24-11; Ord. No. 13-039, § 2, 7-11-13 (); Ord. No. 14-048, § 2, 8-14-14 ())

Sec. 35-17. - Grant of annual permit of operating authority.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-17GRANPEOPAU)

Sec. 35-18. - Limitations of operating authority.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-18LIOPAU)

Sec. 35-19. - Renewal of annual permit of operating authority.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-19REANPEOPAU)

Sec. 35-20. - Amendment, suspension, and revocation of operating authority.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-20AMSUREOPAU)

Sec. 35-21. - Permit fees.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-21PEFE)

Sec. 35-22. - Number of taxicabs, limousines, buses, shuttle, and pedicab vehicles authorized.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-22NUTALIBUSHPEVEAU)

Sec. 35-23. - Special provisions of operating authority.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV2OPAU_S35-23SPPROP)

DIVISION 2. - OPERATING AUTHORITY

Sec. 35-11. - Operating authority required.

- (a) A person may not operate a taxicab, limousine, bus, shuttle, or pedicab service inside the city without operating authority granted under this chapter, nor may a person transport a passenger for hire inside the city by taxicab, limousine, shuttle, or pedicab unless the person driving the taxicab, limousine, bus, shuttle, or pedicab or another who employs or contracts with the driver has been granted operating authority under this chapter.
- (b) A person shall not engage or hire a taxicab, limousine, bus, shuttle, or pedicab that he knows does not have operating authority from the city.

(*Ord. No. 02-058, § 3, 6-27-02; Ord. No. 13-039, § 2, 7-11-13 (l)*)

Sec. 35-12. - Transferability of operating authority.

Sec. 35-92. - Rates of fare for limousine, bus and shuttle vehicles

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV6RAFALIBUSHVE_S35-92RAFALIBUSHVE)

Sec. 35-93. - Rate of fare for pedicabs.

(https://www.municode.com/library/tx/galveston/codes/code_of_ordinances?nodeId=PTIICOCI_CH35VEHI_ARTITALIBUSHPEHODRCA_DIV6RAFALIBUSHVE_S35-93RAFAPE)

DIVISION 6. - RATES OF FARE FOR LIMOUSINE, BUS AND SHUTTLE VEHICLES

FOOTNOTE(S):

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Editor's note— Ord. No. 13-039, § 2, adopted July 11, 2013 (), amended the title of art. I, div. 6 to read as set out herein. Previously art. I, div. 6 was titled fares.

Sec. 35-86. - Rates of fare-taxicabs.

- (a) A holder of a taxicab permit may charge only rates of fare, which have been approved by the city council. A holder of a taxicab permit may propose a change in its rates of fare by filing the proposal with the city secretary and the director for consideration by the city council.
- (b) The city council shall hold a hearing to consider the proposed change in rates of fare. After the hearing the city council may approve, disapprove, or modify the proposed change.

(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-87. - Maximum taxicab fares.

It shall be unlawful for any taxicab company or driver to charge more than the following fares, as applicable:

- (1) Three dollars (\$3.00) for the first one-quarter ($\frac{1}{4}$) of a mile;
- (2) Sixty cents (\$.60) for each one-fourth ($\frac{1}{4}$) of a mile thereafter;
- (3) Thirty dollars (\$30.00) per hour metered time.
- (4) There shall be a one dollar (\$1.00) charge for each additional passenger going to the same location.
- (5) No charge will be made for hand luggage.
- (6) In the event two (2) or more taxicab passengers are going to the same destination, the driver shall collect only one fare as recorded on the taximeter. If the passengers are going to different destinations, the driver shall clear his taximeter at the first

destination and charge the first passenger the amount recorded on the taximeter, and then proceed to the next destination as though it were a completely new trip. Other destinations shall be treated likewise.

(Ord. No. 02-058, § 3, 6-27-02; Ord. No. 08-036, § 2, 6-26-08)

Sec. 35-88. - Display of rate card by taxicabs.

- (a) A holder shall provide the driver for each taxicab operating under its authority, printed cards or stickers containing the approved rates of fare of the holder. There shall be posted in two conspicuous places on the inside of each licensed taxicab, a card of a size to be determined by the taxicab inspector, showing the rates allowed to be charged.
- (b) While operating a taxicab for hire, a driver shall, in a manner approved by the director, prominently display two (2) rate cards or stickers inside the taxicab and two (2) rate cards or stickers outside the taxicab so that passengers can easily read them.

(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-89. - Computation of fares for taxicabs.

Unless a holder's approved rates of fare or operating authority provide otherwise, a holder shall equip each taxicab with a taximeter, and a driver shall charge only a fee as computed by the taximeter. However, a holder may authorize a driver to make a flat rate charge for a trip to a destination which is not covered in the holder's approved rates of fare, if the taximeter is kept in operation while the taxicab has a passenger within the scope of the area designated in the approved rates of fare.

(Ord. No. 02-058, § 3, 6-27-02)

Sec. 35-90. - Design and testing of taximeters; fees.

- (a) A taximeter must accurately register in legible figures on the basis of both mileage and time under the rates and charges established in this article. Figures denoting the fare must be illuminated when the meter is activated.
- (b) A taximeter must be mounted in a conspicuous location in the taxicab in a manner approved by the director so that the face of the taximeter and the fare numerals may be easily seen and read by a passenger sitting in any part of the taxicab. A taximeter must be equipped to indicate whether the taxicab is engaged or vacant.
- (c) If the taximeter employs a flag, the flag must project at least four (4) inches above the dashboard when in the non-earning position.
- (d) The taximeter or its drive system must be sealed at all points at which components, if manipulated, could affect the function or accuracy of the taximeter.
- (e) The design of a taximeter is subject to approval by the director to assure that it complies with this section. No taximeter shall be used on any taxicab the type and design of which has not been approved by the director. Before installing a taximeter, taxicab owners shall submit the type and design of taximeter to the taxicab inspector. If the taximeter is

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-06

**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and
SYLVIA ROBLEDO d/b/a 81ST DOLPHIN PARKING**

v.

**THE BOARD OF TRUSTEES OF THE GALVESTON
WHARVES and THE GALVESTON PORT FACILITIES
CORPORATION**

AFFIDAVIT OF CECIL STROUD

STATE OF TEXAS §
 §
COUNTY OF GALVESTON §

BEFORE ME, the undersigned notary public on this day personally appeared Cecil Stroud, who known to me and being duly sworn, declared and stated as follows:

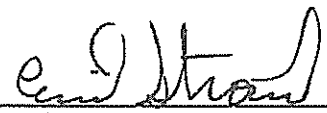
“My name is Cecil Stroud. I am over eighteen (18) years of age and I am fully competent to make this Affidavit. I have personal knowledge of the facts stated in this Affidavit, which are all true and correct.

I am employed by the City of Galveston as Senior Taxi Inspector in the Galveston Police Department. In this position, my duties and responsibilities include implementation of Chapter 35 of the Code of The City of Galveston relating to Vehicles for Hire. In my position, I am required to ascertain whether or not vehicles are covered by Chapter 35, and if

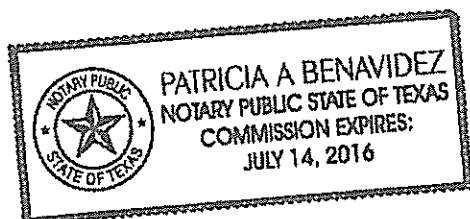
so, to implement its provisions regarding entry of operating agreements and vehicle inspections.

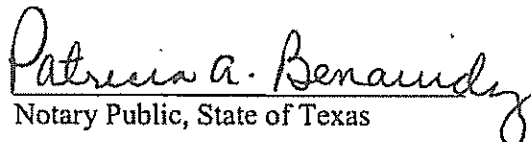
The City of Galveston does not enter into operating agreements with Santa Fe Discount Parking, Inc. d/b/a EZ Cruise Parking, Lighthouse Parking, Inc. and Sylvia Robledo d/b/a 81st Dolphin Parking. The City of Galveston does not enter into operating agreements with any other companies providing shuttle services relating to the operation of shuttle buses transporting passengers and luggage between privately owned parking lots and the cruise terminal located at the Port of Galveston. Additionally, Chapter 35 of the Code of the City of Galveston does not apply to shuttle buses operated by locate hotels. Therefore, the City of Galveston has not ever entered into operating agreements with any of these companies or hotels, and has no plans to do so.

Further affiant sayeth not."


Cecil Stroud

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned Notary on this 20 day of October, 2014, by Cecil Stroud, to certify which witness my hand and official seal.




Notary Public, State of Texas